CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

May 13, 2004

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:49 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Phil Blair, Sheridan Downey, Pam Karlan and Tom Knox were present.

Item #1. Public Comment.

There was no public comment regarding items not on the agenda.

Consent Calendar

Commissioner Downey moved approval of the following items:

Item #2. Approval of the Minutes of the April 8, 2004, Commission Meeting.

Item #3 *In the Matter of Vikram Budhraja*, FPPC No. 02/1075. (5 counts.)

Item #4. *In the Matter of Armando Rea, and Citizens to Elect Armando Rea*, FPPC No: 97/352. (15 counts.)

Item #5. *In the Matter of Plus One, Inc.*, FPPC No. 03/418. (1 count.)

Item # 6. *In the Matter of Paul Glaab*, FPPC No. 02/545. (2 counts.)

Item #7. Failure to Timely File Late Contribution Reports – Proactive Program.

a. *In the Matter of Mary Quinn Delaney*, FPPC No. 2004-140. (1 count.)

b. *In the Matter of Roger C. Hobbs*, FPPC No. 2004-143. (1 count.)

c. *In the Matter of Jillian Manus-Salzman*, FPPC No. 2004-149. (1 count.)

d. *In the Matter of Jerome S. Moss*, FPPC No. 2004-150. (1 count.)

e. *In the Matter of Nelson Homes, Inc.*, FPPC No. 2004-151. (1 count.)

f. *In the Matter of T. Boone Pickens, Jr.*, FPPC No. 2004-152. (1 count.)

g. *In the Matter of Republican Main Street Partnership, Inc.*, FPPC No. 2004-153. (1 count.)

h. ***In the Matter of Francine & Carl Thompson*, FPPC No. 2004-158.** (1 count).

i. ***In the Matter of Daniel D. Villanueva*, FPPC No. 2004-159.** (1 count.)

j. ***In the Matter of Carolee White*, FPPC No. 2004-160.** (1 count.)

k. ***In the Matter of Donahue Wildman*, FPPC No. 2004-161.** (1 count.)

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Karlan, Knox and Chairman Randolph voted "aye." The motion carried by a vote of 5-0.

Item #8. Amendment of Reg. 18707.1 ("Public Generally" Exception).

Commission Counsel Natalie Bocanegra explained that the language of the proposed amendment to regulation 18707.1addressed the public generally exception and would apply to all types of decisions, not just general plan decisions. Explained that version 1 clarified that a decision must "financially" affect an official's economic interest in substantially the same manner as it would affect a significant segment of the public, and specifies that the financial effect does not need to be identical to the financial effect on the public generally to be considered, "financially affected in substantially the same manner." She noted that version 2 did the same thing, but also dealt with leasehold interests. Staff believes, based on public comments, that the leasehold interest language would be used infrequently, and therefore recommended version 1.

Commissioner Karlan suggested that lines 15 and 16 of the second page of version 1 be changed to, "the financial effect need not be identical for an official to be considered financially affected in substantially the same manner," because she found the current proposed language unclear.

Chairman Randolph noted that it was the economic interest that would be financially affected.

Commissioner Karlan also suggested the addition of quotation marks to the sentence, so that the sentence read, "The financial effect need not be identical for the official's economic interest to be considered 'financially affected in substantially the same manner.'"

Commissioner Karlan moved that version 1 be accepted as amended.

Commissioner Downey seconded the motion.

Commissioners Blair, Downey, Karlan, Knox and Chairman Randolph voted "aye." The motion carried by a vote of 5-0.

Item #9. Proposed Regulatory Action to Address General Plan Decisions: Amendment of Reg. 18704.2 (Direct/Indirect Involvement) and Adoption of Reg. 18707.10 ("Public Generally" Exception).

Ms. Bocanegra reviewed the work of the Commission on this amendment, noting that staff presented amendments dealing with various steps of the 8-step conflict of interest analysis, with the most recent direction from the Commission asking staff to develop language addressing general plan issues at steps 4 and 7 of that analysis. She was presenting that draft regulatory language.

Ms. Bocanegra stated that the proposed language for both proposals was meant to apply to decisions which identify planning objectives or decisions that were otherwise exclusively policy decisions. It was also meant to be narrowly applied to the types of decisions that solely concern general plans, are preliminary in nature, do not identify parcels, and do not implement actions. She noted that the step 4 language excluded decisions initiated by certain persons and the step 7 language required that the decision be one with broad applicability to the entire jurisdiction of the official. She explained that the step 4 language would apply only to real property interests while the step 7 language would apply to all economic interests.

Ms. Bocanegra explained that the language of step 4 creates a presumption that certain general plan decisions would not materially affect the official's real property, and therefore it would be presumed that the official would not have a conflict of interest. If there were facts showing that there was a material financial effect on the public official's interests, the presumption could be rebutted and the official would then be considered to have a conflict of interest. The proposed amendment would change the presumption that an official has a conflict of interest to a rebuttable presumption that the official does not have a conflict of interest by changing the differentiation between "directly" and "indirectly" involved real property.

Ms. Bocanegra compared the step 4 and step 7 proposals, noting that the proposed new language addressing step 7 would allow a public official to participate in a decision because the material financial effect of the decision would be considered indistinguishable from its effect on the public generally. She noted that the language would not allow consideration of additional facts that show the economic interests of the official would, in fact, be financially affected by the decision in a manner that is distinguishable from the decision's affect on the public generally. She referred the Commission to Attachment 3 of the staff memo which compared the two proposals.

Ms. Bocanegra stated that the *Sansone* advice letter cited an example wherein, under the current regulation, a public official's property was considered to be "directly" involved in a decision. She noted that the proposed amendment addressing step 4 would change that to be "indirectly" involved because the proposal created a presumption of non-materiality. The proposed new regulation addressing step 7 would require that the type of decision be determined to discern whether the "public generally" exception would apply. If it was determined that the decision merely increased development densities without specifying a particular action, the "public generally" exception would apply. However, if there was evidence showing that the effect was, in fact, distinguishable, there would be no way to make the case that a conflict of interest existed in order to disqualify the official. Staff recommended the step 4 proposal because it allowed full consideration of all available facts.

Commissioner Downey questioned why anything needed to be done to relax the analysis leading to the identification of a disqualifying conflict of interest. He explained that any official who owns property in the official's jurisdiction will undoubtedly be faced with decisions that will appear to raise a conflict of interest. He noted that the Commission was being asked to weigh the uncertainty of whether an official should be disqualified and the need to have the officials participate. He suggested that it seemed more likely that the step 4 amendment would be given more serious consideration by the Commission, but questioned whether it really accomplished very much. Commissioner Downey noted that if it did make a change it might overstep the statutory mandate to enforce conflict of interest rules.

Chairman Randolph supported the step 4 language because general plan decisions should have participation from the community. She noted that FPPC advice letters have found both "indirect" and "direct" effects, and thought that a regulation clarifying that it was "indirect" was a good idea. She pointed out that if there are facts showing that the official should be disqualified the presumption could be rebutted. She did not support the step 7 proposal because it goes too far.

Commissioner Downey questioned whether the language of Decision 2 of version 1 prohibited the use of the provisions in (b)(3) when the decision involved the adoption or amendment vote.

Ms. Bocanegra explained that the general plan decisions are made in stages. During the initial stage conflicts were unlikely to be a concern. At the end of the process, after all of the decisions have been made, the official would be allowed to participate in the final approval vote. However, during the middle stage, many different types of decisions have to be made. In the case of an environmental study, some might argue that a conflict would exist for an official at the initial stage because, without the study, the changes could not be made. She explained that the regulations would help when an official lives within 500 feet of a protected area that may be affected by a general plan change. Currently, the official cannot participate in the decision because it is presumed that there

will be a material financial effect even though the proposal does not yet specify what that change will be. The proposed amendment would help in those types of scenarios.

Commissioner Knox stated that the language, "planning objectives or is otherwise exclusively one of policy," of (b)(2)(A) was not clear. He asked for clarification of when the official would be allowed to participate.

Chairman Randolph responded that various policy determinations, such as promotion of land uses, is in the general plan. Every official may be affected by that policy. She explained that the proposed step 4 amendment gives the official a presumption of no conflict unless the presumption can be rebutted.

Commissioner Knox asked whether an official could participate if the issue was whether to encourage greenbelts. He noted that the analysis would still be "indirect" because, at that point, no one knows where the greenbelts would be.

Chairman Randolph pointed out that, currently, if the official's property abutted property that could potentially be designated greenbelt, the official could not participate.

Commissioner Knox responded that further definition of a "planning objective" and "policy" would be helpful.

Chairman Randolph pointed out that communities sometimes set up a process and undertake studies of what the general plan should encompass. She noted that it would be helpful if the public officials knew that, in the early stages, they can participate.

Commissioner Knox noted that Mike Martello's comment letter generally supported the staff approach, but that Mr. Martello believed that the change would be relatively insignificant because only very preliminary decisions would be affected. He questioned whether the regulation was worthwhile.

Mike Martello, with the City of Mountain View and the League of California Cities, commented that his letter focused on consistency in the step 7 approach as well as the question of the legality of the approach. He believed that making changes to the current regulation would be worthwhile because the current 500 foot rule automatically precludes participation, and the proposal will allow participation. However, he pointed out that the rest of the analysis will often result in the official still not being able to participate in the decision.

Mr. Martello discussed the example in his letter, noting that there are subtle things officials can do in a general plan that are very powerful. Specifically, designating greenbelts or amending the circulation element to widen the roads. Widening the roads can increase the property values. He noted that Ventura County, 30 years ago, had a policy of no residential growth in the unincorporated areas unless it was contiguous to a

city. Consequently, a change allowing growth in those unincorporated areas would have raised those property values. He believed the rest of the analysis would conclude that a conflict existed.

Commissioner Knox asked whether, in the Ventura County example, a county supervisor who owned property that could not be developed because of a growth policy would be permitted to vote on changing the growth policy under the proposed step 4 approach.

Mr. Martello did not believe that the proposed change in the law would change the participation of the official.

In response to a question, Ms. Bocanegra stated that a public official would be able to participate under the proposal when no action is being taken.

Chairman Randolph noted that, when one official has a living unit in an area and another had a leasehold interest in the same area, both officials' property would be considered directly involved if the properties were within 500 feet of the area under consideration for a change. If that presumption is changed to one of indirect involvement the official could participate in discussions regarding whether certain uses of the area should be encouraged because the official's properties would not reach the level of a conflict.

Commissioner Knox pointed out that, under the step 4 approach, the stage at which the proposal is brought for a decision would be a determining factor. He asked for clarification of when that stage changes the analysis.

Chairman Randolph explained the frustration public officials feel when many of the decisions never reach the stage where a conflict exists. She pointed out that, if officials can participate in changing the vision of the jurisdiction, hoping that a developer will come in and implement that vision, the official would at least have been allowed to participate in developing the vision even though a developer may not come in to implement that vision.

Commissioner Karlan stated that the problems arising from an official's personal residence are different than those that arise from of simply owning property in the jurisdiction. She questioned whether there are problems with regard to an official's residence at the initial stages of the general plan discussions.

Mr. Martello responded that the regulation would probably allow an official to participate in decisions involving property within 500 feet of the official's principal residence. However, if the official owns vacant land, then participation in the decision would probably be prohibited.

Commissioner Blair noted that staff could check agendas ahead of time to determine whether items will affect the official's participation. However, he pointed out that

sometimes the direction of the discussion changes suddenly, and an official may have to question whether he or she can continue to participate. He believed that the language should be very clear so that an official will be able to make that determination in those situations. He asked how it could be clarified so that meetings would not have to be suspended while officials check to see if the property under discussion is within 500 feet of the official's property.

Commissioner Karlan responded that she understood it to be easier to rebut the presumption of non-materiality when the property involved was investment property as opposed to a principal residence.

Mr. Martello clarified that the current presumption of a conflict could be rebutted now with regard to principal residences. He believed that people do not want to try to rebut the current presumption of materiality because of the need for "proof" in the rebuttal. If the presumption is changed to "indirect" involvement, he did not think that a person with development potential on their property would rebut the presumption. Similarly, he believed that the homeowner will feel more comfortable participating.

In response to a question, Mr. Martello stated that he would be much more cautious advising a person with investment property as opposed to a residence. He agreed with Commissioner Blair that the direction of discussions often do change in the middle of a meeting.

Commissioner Knox asked whether the "planning objectives or one of policy" language of the proposal would be difficult to interpret.

Mr. Martello responded that there could be some question because he could not tell whether concrete proposals could be considered under that language.

Commissioner Knox asked whether the terms were sufficiently precise to give guidance to public officials.

Ms. Bocanegra responded that staff worked on this language for quite some time, and that there was difficulty deciding how and where to draw the line. Staff concluded that the proposed language best captured the types of decisions that were of concern in the general plan issues. She pointed out that the step 4 language was preferable to the step 7 language. She explained that the current presumption of materiality is often not rebutted simply because of the resources and effort required to do so. She suggested that the proposed regulation would help alleviate that problem.

Commissioner Karlan observed that the language of (B) and (C) clarified what is meant by a policy decision, and that (B) and (C) must be satisfied.

General Counsel Luisa Menchaca agreed, noting that lines 4-20 of the proposal address that issue. She believed that if the regulation is adopted officials would then have a checklist to use to determine whether participation is permissible. She agreed that this was a difficult issue, but noted that the regulation would be very helpful.

Ms. Menchaca stated that the issue of certainty exists in both regulations. The step 7 proposal has the language, "a comprehensive decision," which will probably generate questions. She noted that local jurisdictions believe that the public officials should be participating in the broad decisions.

Commissioner Knox questioned why decisions initiated by a public official should be a determining factor in the direct/indirect analysis.

Ms. Menchaca responded that the person initiating the proceeding is directly impacted by the proceeding.

Commissioner Downey noted that the person who proposes an action can more likely be presumed to have direct involvement in an issue. He noted that the presumption can be rebutted.

Commissioner Knox stated that a member of a Planning Commission who initiates a proposal for more green belts should not be treated differently than the other commissioners. He explained that the proposal has either a direct or an indirect effect.

Chairman Randolph suggested that the language could be changed to read, "if the applicant is the public official."

Commissioner Karlan observed that if the proposal were a particular project it would not satisfy step (3)(C). She noted that, if only one official wants to propose something, then there might be more reason to think that the individual's own self-interest is motivating the official. She believed that the language could be left as proposed because it would capture as "directly" involved property belonging to an official that is within 500 feet of property under discussion.

Chairman Randolph agreed.

Commissioner Knox stated that the difference between "direct" and "indirect" becomes tortured when it is hinged on who proposes the discussion.

Commissioner Downey noted that they were trying to avoid even the appearance of a conflict even if no actual conflict exists and agreed that the proposed language worked.

Chairman Randolph observed that there did not seem to be support for the step 7 approach and asked whether the Commission agreed that the step 7 proposal should not

be brought back for an adoption hearing. She noted that San Diego County supported that proposal. There was no objection to not bringing back the step 7 approach.

Commissioner Downey stated that he was now convinced that the proposed step 4 amendment to the regulation would be beneficial, even though its use might be limited. He agreed that the step 4 approach should be adopted.

Chairman Randolph directed staff to bring the proposal back to the Commission in August.

Commissioner Blair asked that the regulation be formatted with bullets to make it easier to follow.

Item #10. Proposed Regulatory Action to Address "Has Reason to Know/Reasonable Diligence" (Adoption of New Regulation 18700.1).

Commission Counsel Ken Glick explained that the proposed regulation was drafted in accordance with the Commission's direction to clarify what efforts would be sufficient to determine whether a conflict of interest exists. He explained that § 87100 of the PRA prohibits a public official from participating in a governmental decision when that public official knows or has reason to know that the official has a financial interest in the decision. He reported that staff concluded that the "knows or has reason to know" language imposes a duty on a public official to find out whether they have a financial interest if they do not already know. Staff also concluded that a public official must exercise "reasonable diligence" in attempting to obtain that information. He pointed out that "duty" and "reasonable diligence" provide the rationale for the proposed regulation.

Mr. Glick recommended that the Commission endorse the underlying concept of "duty" and "reasonable diligence," and direct staff to seek public comment addressing the content of the general rule.

Mr. Glick explained that subdivision (a) of the proposed regulation addressed broad principles with regard to "reasonable diligence" and "reasonably prudent public official." He noted that those principles do not provide officials with the certainty they seek. Therefore, staff distilled from prior advice specific actions public officials could take to meet the "reasonable diligence" requirement. He reported that those actions were listed in subdivisions (b) and (c) of the proposal.

Mr. Glick stated that the two steps outlined in (b) would be mandatory in any exercise of reasonable diligence under the proposal. The first would require that an official review agency material pertaining to a decision as well as any other relevant information possessed by the agency, and Mr. Glick described some of those materials. Additionally, officials would be required to undertake the FPPC's standard 8-step conflict of interest analysis to reach a conclusion regarding the official's participation in a decision. Mr.

Glick suggested that "reasonable diligence" could not be reached without utilizing those two steps and recommended that both elements be included in the proposed regulation.

Mr. Glick explained that subdivision (c) proposed three additional optional steps that were not necessarily applicable in all contexts. The first step proposed that officials review any relevant FPPC materials, including advice, opinions, or information available on the FPPC website. The second optional step proposed that officials obtain written advice or an opinion from the FPPC concerning the official's participation. The third optional step proposed that the official review information available personally to the official, the official's family or information available to any representative or agent of the official, including bookkeepers or accountants. He recommended that the optional steps be included in the regulation to provide greater certainty for public officials to know that they have exercised "reasonable diligence."

Mr. Glick explained that subdivision (d) of the proposed regulation clarified that an official's use of a third party to conduct the "reasonable diligence" analysis did not relieve the official from obligations nor insulate the official from any liability. Staff included this language because the question has arisen in the past through advice requests.

Mr. Glick noted that staff also examined whether the regulation could delineate specific circumstances in which it was appropriate to believe that an official had "reason to know" of a financial interest in a decision. He explained that staff determined it would be close to impossible to address every potential situation in a regulation, and believed that inclusion of only a few circumstances would make the issue more confusing than illuminating. Staff did not include that language in the proposed regulation.

Mr. Glick stated that staff also examined whether to include language describing the effect of complying with the regulation, such as receiving immunity. Staff did not include it in the regulation because they did not yet have any guidance from the Commission.

Mr. Glick presented an example of how the regulation would work, using a hypothetical city council member to illustrate the issue. In the example, the council member would have the opportunity to vote on an issue in which the council member did not know whether a conflict existed. However, the official knew that there was a potential conflict. He illustrated how the official would use the proposed regulation to determine whether the official could participate, concluding that the public official would have reason to know that the decision could have a financial effect on the official's personal finances.

Chairman Randolph was concerned that the mandatory actions assume that the official has access to certain materials, which may not be true. She questioned whether an official would be required to examine agency documents to discern whether the official's

source of income is involved in a project when the source of income is not mentioned in the agenda materials.

Mr. Glick responded that it might not be easy or possible to access agency materials. In that case, the official would look to the general rule for guidance. In the Chair's example, he believed that a reasonable person would try to access the materials, but when those efforts became unreasonable the official could stop the search. He suggested that (b)(1) could include a qualifier indicating that the official would look at other information in the possession of the agency which a reasonably prudent public official would deem relevant.

Mr. Glick responded that an official would still have to abstain from participating when the official knows that he or she has a financial interest even when their vote would be contrary to a vote that would benefit the official's financial interest.

Commissioner Knox stated that he was not sure that a regulation is necessary on this point. He noted that courts often explore "knows or has reason to know" and generally ask what a prudent person would do under those circumstances. He explained that the circumstances can vary in so many ways that it would be very difficult to develop a regulation that would actually help in understanding the law. He noted that subdivision (c) reinforces that view with its language, "the exercise of reasonable diligence may include the following." As a practicing lawyer, he would not know whether he was supposed to do something under that language.

Commissioner Downey agreed.

Commissioner Karlan pointed out that the language, "shall exercise reasonable diligence to determine whether he or she has reason to know" was confusing because the official would be required to exercise reasonable diligence in order to determine whether the decision has a reasonably foreseeable impact, not to determine whether the official has reason to know. She was also concerned that the language "of like office" might intimate that some people may have less of a duty of diligence than others if their office is less important.

Mr. Glick responded that the regulation was important because the question of whether an official has a duty to find out if a conflict exists has been presented 13 times in the last 17 years.

Commissioner Karlan pointed out that the statute provides that the official has that duty.

Mr. Glick responded that the question has come up frequently enough that guidance through the regulations is a good idea. He noted that a recent court decision concluded that the language "knows or has reason to know" creates a duty to become educated. He

believed that laypersons might find the language helpful in a regulation, and suggested that the public may want to discuss it at interested persons meetings.

In response to a question, Ms. Menchaca confirmed that officials often ask what they need to do to meet the "due diligence" requirement. Most often, she pointed out, officials want to know if their belief that they do not have a financial interest is enough.

Commissioner Downey suggested that only subdivision (a) be included in the regulation.

Commissioner Karlan agreed, noting that some of the language could be changed.

Commissioner Knox agreed.

Chairman Randolph noted that subdivision (a) includes the advice that staff is currently giving in advice letters.

Commissioner Karlan suggested deletion of the language "reason to know."

Mr. Glick stated that the PRA does not require that the official know to a scientific certainty that a material financial effect exists.

Commissioner Karlan agreed, but noted that it was already covered in the language on line 8 of the proposal.

Mr. Glick noted that, in an enforcement context, it is difficult to show, subjectively, what an official knows.

Commissioner Karlan suggested that it should be enough to show that there is a reasonably foreseeable material financial effect and that someone who engaged in due diligence would have figured it out.

Mr. Glick agreed.

Ms. Menchaca suggested that line 5 be changed to read "…does not know or have reason to know whether..."

Chairman Randolph suggested that the language read, "if a public official does not have actual knowledge of whether a decision may have a financial effect……."

Commissioner Karlan added that the official would then be required to exercise reasonable diligence to determine whether it does. She believed that would address the concern of officials being willfully ignorant.

Commissioner Downey did not agree that the "does not know" language was helpful. He believed that the language should start with a mandate that public officials shall exercise reasonable diligence.

Mr. Glick observed that it would then be implied that it only applies if they have no actual knowledge.

Commissioner Downey agreed. He noted that the official who did not know whether he or she had a financial interest in the decision would be required to find out.

Scott Hallabrin, with the Assembly Ethics Committee, pointed out that it may be an indefinable issue. He noted that the same type of issue came up many years ago when he worked on a "personal use of campaign funds" issue, in trying to determine what was "directly related" versus what was "reasonably related" to a purpose. At the time, they tried to come up with definitions but could not, and finally gave up. He agreed that a regulation may not be necessary other than, possibly, the language in subdivision (a).

Jim Sutton, from the Sutton Law Firm, stated that he was disappointed that the regulation did not address SEI filings. He believed that disclosure guidance would be very helpful. He reviewed the *Christiansen* advice letter, and pointed out that it renders the whole process under discussion meaningless because the information would have to be disclosed on the official's SEI anyway. He explained that this has been problematic in the past, and noted that an official who has investments is required to know what those investments are for reporting purposes, regardless of how difficult it may be to trace that information. Tracing that information becomes increasingly problematic when someone else handles the investments for the official or when the investments are in the form of index funds or venture capital funds. He noted that FPPC staff are very sympathetic to the problem but still require that the information be reported. Mr. Sutton listed activities an official might have to engage in to research the information, noting that investments, and consequently the results of the research, could change in a short period of time.

Mike Martello, with the City of Mountain View and the California League of Cities, commented that proposed subdivision (d) was an important piece of the proposal because it makes clear to public officials that the analysis is their responsibility. It would also help when training public officials if it can be shown that the FPPC requires the information. He noted that officials who have trusts have difficulty identifying the contents of the trust because they are not yet beneficiaries of that trust and may not be allowed to know what is in them. Mr. Martello agreed that the official would have to research the investments again after a short period of time because investments change so often.

Mr. Martello understood that this may be the first step towards a standard of care, which has the support of the regulated community because it would protect officials from prosecution if the officials had taken the necessary steps to avoid a conflict. He described

the efforts of city attorneys to write a standard of care a few years ago. He pointed out that, if this regulation is the first step towards a standard of care, it would be helpful. He cautioned that closed session materials should not have to be reviewed to determine whether a conflict existed.

In response to a question, Mr. Martello stated that inclusion of the proposed subdivisions (a) and (d) would be helpful.

In response to a question, Mr. Martello stated that, when a council member believes that he or she does not own stock in, as an example, Home Depot, and a decision comes up involving Home Depot, it would be mandatory that the official research all of his or her investments to determine whether a conflict exists. He pointed out that, if that decision comes up unexpectedly during a meeting, the elected official must still know whether he or she has a conflict. He believed that the official should either get a continuance of the discussion in order to research the investments, or simply step down and not vote out of caution. He noted that the official may not use a trust or a broker to hide investments from the public, unless it is a blind trust.

Commissioner Blair asked whether a blind trust could be considered "willful ignorance."

Chairman Randolph responded that there is a definition of "blind trust" and that investments into a blind trust would not need to be researched.

Commissioner Karlan pointed out that the SEI should have the information in it already, with the exception of recent investments.

Chairman Randolph agreed, noting that officials should pay attention to changes in those economic interests.

Chairman Randolph stated that the Commission could drop the proposal altogether, bring the proposal back with subdivisions (a) and (d), or bring the proposal back in its entirety. She believed that subdivisions (a) and (d) should be brought back because advice letters currently set out the standard and it would be helpful to have that information accessible to the public in the regulation and on the website. She agreed that it would be useful to include the language making it clear that it is the official's responsibility to find out whether the official has a conflict.

Commissioner Blair suggested that proposed subdivision (a) should be changed to remove the "has reason to know" language.

Commissioner Downey agreed that (a) and (d) were the key.

Commissioner Karlan supported keeping a checklist in the regulation for educational purposes, and noted that the list should be exemplary.

Commissioner Blair suggested that the checklist be in bullet form so that it will be easier for public officials to follow it.

In response to a question, Chairman Randolph clarified that the proposed regulation should be brought back to the Commission for adoption without requiring additional public input on the issues. She suggested that two versions be prepared, one with staff's current proposed subdivisions (a) and (d) included in the language, and the other with (a), (d), and some type of permissive checklist.

Commissioner Knox stated that he did not support pursuing the regulation.

Item #11. Legislative Report

AB 2818 (Pacheco)

Executive Director Mark Krausse reported that AB 2818 addressed disqualifying campaign contributions and provided that a $250 threshold for disqualification of contributions to boards and commissions would be indexed for inflation, changing the current threshold to $500. He noted that the Chairman's Legislative Subcommittee took a position of oppose because it involved the one area where there is an apparent *quid pro quo*. He asked for ratification of the subcommittee's "oppose" position.

There was no objection from the Commission.

AB 3101 (ER&CA)

Mr. Krausse reminded the Commission of the lawsuits prior to the recall election because the plaintiffs wanted to change their minds about electing to accept the voluntary expenditure limits. The bill cleans up the language so that the election cannot be changed after the deadline to file nomination papers.

In response to a question, Mr. Krausse stated that staff recommended a support position on the bill, allowing a candidate to change their election up to or not more than twice after the initial filing of the statement but before the close of the nomination period. It should reduce instances where the FPPC is sued for not permitting a candidate to change that election after the deadline. He explained that it was important to do so because there is an existing law that permits amending any statement to ensure its accuracy.

Commissioner Knox questioned why anyone should be allowed to change their election at all, noting that it could bring gamesmanship into the process.

Chairman Randolph pointed out that this proposal first came up in 2003 under AB 1501, and the Commission discussed the number of times the election should be changed. That

bill was supposed to limit the time frame in which to make the change, but erroneously made that time frame too broad.

In response to a question, Mr. Krausse stated that staff recommended the original bill be supported if amended to limit the number of times the election was changed. At that time, the Commission was not concerned about the number of times the election was changed and believed that the bill should be supported.

Chairman Randolph pointed out that candidates successfully argued to the Superior Court that they were allowed to change their statement of intention because of the provision allowing amendment to any report. She explained that the case was under appeal.

Mr. Krausse stated that a candidate might accept the contribution limits only to learn that a self-funded candidate entered the race. The candidate may want to change his or her mind preferring to exceed the contribution limits to better compete with the self-funded candidate.

Chairman Randolph explained that the statute made clear that the election could not be changed even if an innocent mistake was made. The proposed language would allow someone who made the mistake to correct it.

In response to a question, Mr. Krausse stated that candidates could elect to accept the limits and then change that election twice.

In response to a question, Mr. Krausse explained that the current state of the law is that candidates can change their election two times but they can do so after the deadline.

There was no objection to a position of support on the bill.

SB 1351 (Soto)

Commission Assistant Sandy Johnson explained that SB 1351 proposed to extend the "revolving door" provisions to former elected city and county officials. She noted that staff was asking for ratification of the Chairman's Legislative Subcommittee's oppose position on the bill. Staff was also requesting technical changes to the bill should it become law.

Ms. Johnson reviewed the current "revolving door" provisions, noting that those laws currently apply to state officials. She noted that the only "revolving door" laws that apply to local officials are those that apply to decisions dealing with persons with whom the official is negotiating future employment, and laws applied to air pollution control districts and air quality management districts.

Ms. Johnson stated that the proposed bill would prohibit all former elected city and county officials from appearing before their former agency as a compensated representative for the purpose of influencing certain types of actions. She explained that the ban would be in effect for one year after the official leaves office.

Ms. Johnson noted that the Chairman's subcommittee reviewed the bill and objected to its "one-size-fits-all" approach, noting that there was no evidence of revolving door problems at the local level and recognizing that the issues would be better handled at the local level. Secondly, the subcommittee recognized that the bill would require substantial additional funding to implement the bill.

Ms. Johnson requested ratification of the subcommittee's "oppose" position and the recommended technical changes.

In response to a question, Ms. Johnson stated that the subcommittee recommended the oppose position because of budget challenges and because the issue should be handled at the local level. She noted that some local jurisdictions currently have their own "revolving door" laws and they are not all the same.

Commissioner Blair pointed out that recommending the issue be handled at the local level seemed to be a departure from FPPC policy.

Mr. Krausse pointed out that AB 3101 was an example of a rule that should be the same for everyone, but that, in this case, the different characteristics of the jurisdiction can be a factor.

Chairman Randolph pointed out that, when dealing with regulatory issues, the statute has already applied the law to local officials. She noted that, since this was a statutory proposal it gave the Commission the opportunity to look at whether it should be a statewide change. She explained that local jurisdictions with revolving door rules have very different provisions.

There was no objection to the proposed recommendation.

SB 2949 (Florez)

Executive Fellow Stephanie Dougherty explained that SB 2949 would establish that the $100,000 limit on the amount that a state candidate may personally loan his or her campaign includes the proceeds of a loan obtained from a commercial lending institution. The bill would clarify in statute the findings in the *Camp vs. Schwartzenegger* decision. She reported that the issue will be presented to the Commission for discussion in August 2004. She recommended a "support" position on the bill even though staff believed that the Commission has sufficient authority to adopt regulations regarding the topic.

There was no objection to a "support" position on the bill.

Item #12. Executive Director's Report

Mr. Krausse stated that the Governor's May revision should be available later in the day. He noted that the legislative subcommittees were holding the FPPC budget decisions until the May revision was out to see if they would change the amount allocated in the Governor's proposal. He expected to have more information the following week.

Item #13. Litigation Report

There were no changes or additions to the staff report.

Chairman Randolph adjourned the meeting to closed session at 11:47 a.m.

Chairman Randolph reconvened the public meeting at 2:05 p.m., noting that there was nothing to report from closed session.

The public meeting was adjourned at 2:05 p.m.

Dated: June 10, 2004.

Respectfully submitted,

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Sandra A. Johnson
Commission Assistant

Approved by:

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Chairman Randolph